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12 Netflix Worldwide Entertainment, LLC

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15 **UNITED STATES DISTRICT COURT**
16 **CENTRAL DISTRICT OF CALIFORNIA**

17 FIONA HARVEY,
18 Plaintiff,
19 v.
20 NETFLIX, INC., and NETFLIX
21 WORLDWIDE ENTERTAINMENT,
22 LLC,
23 Defendants.

24 Case No. 2:24-cv-04744-RGK-AJR

25 **REQUEST FOR JUDICIAL NOTICE IN
26 SUPPORT OF DEFENDANTS'
27 SPECIAL MOTION TO STRIKE**

28 Date: September 3, 2024
Time: 9:00 a.m.
Place: Courtroom 850

Hon. R. Gary Klausner

1 **REQUEST FOR JUDICIAL NOTICE**

2 **I. INTRODUCTION.**

3 Pursuant to Federal Rule of Evidence 201 and the incorporation by reference
4 doctrine, defendants Netflix, Inc., and Netflix Worldwide Entertainment, LLC
5 (collectively, “Netflix”), respectfully request that the Court take judicial notice of
6 the documents identified in this Request and attached to the Declaration of Marvin
7 S. Putnam (the “Putnam Decl.”) in support of Netflix’s Special Motion to Strike
8 Plaintiff Fiona Harvey’s Complaint (the “Complaint”) filed concurrently herewith.

9 **II. LEGAL STANDARD.**

10 Under Rule 201 of the Federal Rules of Evidence, courts may take judicial
11 notice of any fact that is “not subject to reasonable dispute because it: (1) is generally
12 known within the trial court’s territorial jurisdiction; or (2) can be accurately and
13 readily determined from sources whose accuracy cannot reasonably be questioned.”
14 Fed. R. Evid. 201(b). A court “must take judicial notice if a party requests it and the
15 court is supplied with the necessary information.” Fed. R. Evid. 201(c)(2). Proper
16 subjects of judicial notice include publicly available news articles, *see Heliotrope*
17 *Gen., Inc. v. Ford Motor Co.*, 189 F.3d 971, 981 N.18 (9th Cir. 1999), and publicly
18 accessible websites, *see Daniels-Hall v. Nat’l Educ. Ass’n*, 629 F.3d 922, 998-99
19 (9th Cir. 2010).

20 **III. JUDICIAL NOTICE IS APPROPRIATE.**

21 All exhibits attached to the Putnam Decl. are properly subject to judicial
22 notice. Websites are proper subjects of judicial notice. *See Whitaker v. Fortuna*
23 *Enterprises, L.P.*, 2021 WL 4260606, at *2 n.2 (C.D. Cal. May 21, 2021) (granting
24 defendant’s request to take judicial notice of a “hotel website”); *Threshold*
25 *Enterprises LTD. V. Pressed Juicery, Inc.*, 445 F.Supp.3d 139, 146 (N.D. Cal. 2020)
26 (“In general, websites and their contents may be judicially noticed.”). Exhibit A is
27 a copy of Fiona Harvey’s (“Harvey’s”) May 9, 2024 interview on *Piers Morgan*
28 *Uncensored*, which is publicly available at YouTube at

1 https://www.youtube.com/watch?v=Wg6J9eG_n7g. Putnam Decl. Ex. A. This
2 interview is introduced into evidence for its existence and contents, as well as for
3 the truth of Harvey's statements as party-opponent statements.

4 Courts may also take judicial notice of articles. *See In re Bofl Holding, Inc.*
5 *Secs. Litig.*, 2018 WL 1410729, at *7 n.5 (S.D. Cal. Mar. 21, 2018) (taking judicial
6 notice of the complete contents of articles referenced in the complaint). Exhibits B-
7 T are all publicly available articles that are properly subject to judicial notice under
8 Federal Rule of Evidence 201(b)(2). Putnam Decl. Exs. B-T. Netflix requests that
9 the Court accept the articles for their existence and content, as well as for the truth
10 of any statements by Harvey in such articles as party-opponent statements. *See, e.g.*,
11 *Am. Apparel*, 855 F.Supp.2d at 1060-62.

12 Specifically, Exhibits B-H are introduced to show the existence of public
13 interest in Richard Gadd's ("Gadd's") story about his experience with abuse and
14 trauma, including his prior works such as the *Baby Reindeer* play, prior to the
15 premiere of the *Baby Reindeer* series (the "Series") on Netflix. Putnam Decl. Exs.
16 B-H. These articles show that various sources were discussing Gadd's works as
17 early as August 2019, nearly five years before the Series was released on Netflix.
18 Exhibits I-L are introduced to show the existence of articles discussing the
19 nominations and critical acclaim the Series has received. Putnam Decl. Exs. K-L.
20 Exhibits M-O are introduced to show that Harvey was publicly accused of stalking
21 and harassment. Putnam Decl. Exs. M-O. These articles demonstrate that several
22 news sources reported on accusations regarding Harvey harassing and stalking
23 Scottish solicitor Laura Wray and her then-husband Labour Party Member of
24 Parliament Jimmy Wray, First Minister of Scotland Donald Dewar, and former
25 Labour Party Member of Parliament (now Prime Minister of the United Kingdom)
26 Keir Starmer. Exhibits P-S are cited to show that members of the public speculated
27 that several other individuals, other than Harvey, may have been the inspiration for
28 the Martha Scott character in the Series. Putnam Decl. Exs. P-S. These articles are

1 also cited to show the existence of Gadd's public statements asking members of the
2 public to cease speculation regarding the inspiration for the characters in the series.
3 Exhibits M and T are cited to show the existence of public controversy regarding
4 Harvey's involvement in politics and that Harvey's political aspirations were in the
5 public realm. Putnam Decl. Exs. M, T. These articles show that news sources were
6 discussing Harvey's unsuccessful bid to win nomination for a seat in Scottish
7 Parliament and her involvement at a Labour Party short-listing meeting.

8 The existence and contents of the *Piers Morgan Uncensored* interview and
9 the articles are not subject to reasonable dispute and are capable of accurate and
10 ready determination. Further, any statements by Harvey in the interview or the
11 articles should be accepted as indisputably true and admitted for the truth of the
12 matters asserted as party-opponent statements. Netflix thus requests that the Court
13 take judicial notice of the following exhibits:

14 **Putnam Decl. Ex. A** is a true and correct copy of Harvey's interview on *Piers*
15 *Morgan Uncensored* dated May 9, 2024, and publicly available at
16 https://www.youtube.com/watch?v=Wg6J9eG_n7g. Netflix cites to the interview
17 for the fact that Harvey gave an interview on May 9, 2024 on *Piers Morgan*
18 *Uncensored*, which was 54 minutes and 43 seconds in length and has received over
19 14 million views. Netflix also introduces the interview to show the existence of and
20 content of statements by Harvey, which are admissible as a statement by a party
21 opponent to demonstrate that Harvey publicly disclaimed any similarities to the
22 Martha character in the Series and publicly disclaimed stalking and harassing Gadd.
23 Further, because Harvey herself made these statements, they are not subject to
24 reasonable dispute and thus, Netflix introduces the statements for their truth:

25 • Harvey stated that there are only "two true facts in [the Series]: His
26 name is Richard Gadd, and he's a jobbing barman. And we met two or
27 three times." Putnam Decl. Ex. A at 7:40.

- 1 • Harvey stated that she never accepted free drinks from Gadd. *Id.* at
2 9:12.
- 3 • Harvey stated that Gadd never visited her home or looked into her
4 windows. *Id.* at 10:20.
- 5 • Harvey stated that she never sent Gadd any communications, or if any,
6 just a small number. *Id.* at 10:58; 13:40-14:26; 15:20; 37:00; 38:18;
7 41:30.
- 8 • Harvey stated that she never pretended that her messages to Gadd were
9 coming from an iPhone when in fact they were not. *Id.* at 13:07.
- 10 • Harvey stated that she never called Gadd, and didn't even have his
11 number. *Id.* at 34:50, 37:10.
- 12 • Harvey stated that she didn't know where Gadd lived and never visited
13 his home. *Id.* at 16:48.
- 14 • Harvey stated that she only attended one of Gadd's comedy shows and
15 never heckled him. *Id.* at 16:16.
- 16 • Harvey stated that she never attacked his girlfriend, and believes he
17 never had a girlfriend. *Id.* at 16:38.
- 18 • Harvey stated that she only interacted with Gadd for two or three
19 months, only met him a few times, and was not his friend. *Id.* at 3:58;
20 7:47; 23:46; 39:12; 43:10; 46:12; 53:18.
- 21 • Harvey stated that she is 18-20 years older than the actress that played
22 Martha, and that she does not resemble Martha or sound like her. *Id.* at
23 8:35; 8:40; 18:40 19:11; 22:02.
- 24 • Harvey stated that the only physical similarities she shares with Martha
25 are that they both have dark hair and are Scottish. *Id.* at 19:11.
- 26 • Harvey stated that the Series "is a work of fiction," and that Martha
27 "cannot be me" because she "is a fictional character . . . of [Gadd's]
28 imagination." *Id.* at 7:33; 14:49; 17:22.

1 **Putnam Decl. Exs. B-H** are publicly available articles that Netflix cites to
2 show the existence of public interest in Gadd's story prior to the premiere of the
3 Series.

4 **Putnam Decl. Exs. I-L** are publicly available articles that Netflix cites to
5 show the existence of public interest regarding the nominations and critical acclaim
6 the Series has received.

7 **Putnam Decl. Exs. M-O** are publicly available articles that Netflix cites to
8 show that Harvey was publicly accused of stalking and harassing Laura Wray,
9 Jimmy Wray, Donald Dewar, and Keir Starmer, and the existence of public interest
10 in Harvey's stalking and harassment of these individuals. In addition, any statements
11 by Harvey referenced in the articles are introduced for the truth of the matters
12 asserted as party-opponent statements.

13 **Putnam Decl. Exs. P-S** are publicly available articles that Netflix cites to
14 show that members of the public speculated that individuals (other than Harvey)
15 were the inspiration for the Martha character in the Series, and the existence of public
16 statements by Gadd requesting that viewers stop speculating about the "real-life"
17 inspiration for the characters in the Series. In addition, any statements by Harvey
18 referenced in the articles are introduced for the truth of the matters asserted as party-
19 opponent statements.

20 **Putnam Decl. Exs. M and T** are publicly available articles that Netflix cites
21 to show the existence of public controversy regarding Harvey's attempted run for a
22 Scottish Parliament seat and that Harvey's involvement in politics existed in the
23 public realm. In addition, any statements by Harvey referenced in the articles are
24 introduced for the truth of the matters asserted as party-opponent statements.

25 These articles and the *Piers Morgan Uncensored* interview are all publicly
26 available and their contents are not subject to dispute. They are introduced in support
27 of Netflix's Special Anti-SLAPP Motion to Strike the Complaint to show the
28 existence and contents of certain facts as described above, and for the truth of any

1 matters asserted by Harvey in the articles and interview. Netflix has supplied the
2 Court with all necessary information pursuant to Federal Rule of Evidence 201(c)(2),
3 and thus, the Court should take judicial notice of the existence of the aforementioned
4 exhibits.

5 **IV. CONCLUSION.**

6 In connection with Netflix's Special Anti-SLAPP Motion to Strike the
7 Complaint and for the reasons above, the Court should take judicial notice of
8 Exhibits A-T to the Declaration of Marvin S. Putnam, filed concurrently herewith.

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11 Dated: July 29, 2024

Respectfully submitted,

12 LATHAM & WATKINS LLP
13 Marvin S. Putnam

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15 By /s/ Marvin S. Putnam
16 Marvin S. Putnam
17 Attorney for Defendants
18 Netflix, Inc., and Netflix Worldwide
19 Entertainment, LLC

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